ORIGINAL

DOCKET FILE COPY ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

1998

In the Matter of	)	
	)	
Southwestern Bell Telephone Company,	)	
Pacific Bell, and Nevada Bell Petition for	)	CC Docket 98-91
Relief from Regulation Pursuant to Section 706	)	
of the Telecommunications Act of 1996 and	)	
47 U.S.C. § 160 for ADSL	)	
Infrastructure and Service	)	

REPLY COMMENTS OF ALLEGIANCE TELECOM, INC.

Allegiance Telecom, Inc. ("Allegiance") files these reply comments in the above-captioned proceeding to urge the Commission to reject Petitioners' (or, "SBC's") request for regulatory waivers in connection with the provision of xDSL technology. Thus far, SBC's compliance with its obligations under the Telecommunications Act of 1996 ("Act") has been minimal at best.[1] With respect to the network of local loops under its control, SBC remains a monopolist. Under the law, it must provide just, reasonable, and nondiscriminatory access to the network -- not just give a "paper promise" to do so at some uncertain point in the future. In any case, SBC's proposals fall short of its obligations under Sections 251 and 271 of the Act. Because SBC would have more

[1] *See generally, inter alia,* submissions of nearly all commenters in this proceeding, as well as CC Docket Nos. 98-11, 98-26, and 98-32, who detail the shortcomings of SBC and other ILECs in complying with the market-opening provisions of the Act.

freedom to limit competitive access to the loops required for xDSL, and thereby prevent consumers from realizing a choice of services, Allegiance renews its request that the Petition for regulatory waivers be denied and that the Commission issue a declaratory ruling that SBC and other ILECs are required to provide unbundled and resold xDSL loops and related services.

I. Introduction

Allegiance respectfully submits that the Commission should take no comfort in the "commitment" of SBC (and the apparent faith in SBC of a small minority of commenters[2]) that it will make available to xDSL capable local loops and the collocation space to service them. First, SBC should be required to ensure that loops are equipped for xDSL service (including, where necessary, critical functions such as multiplexing). Second, lest SBC exercise its sole discretion in testing and providing access to xDSL capabilites, creating an incentive for itself to discriminate against competitors and reserve xDSL business for its own retail operations, the Commission should order that lines be tested on an objective basis without an identification of whether the request for such testing has come from a CLEC or SBC's own retail operations. Third, even to the extent that SBC concedes it is required to resell and provide xDSL-capable loops on an unbundled basis, SBC should not be allowed to deny competitors the ability to take advantage of such offerings by pricing

---

[2] USTA, GTE, and BellSouth are the only ILECs to file comments in this proceeding. The Comment of Campaign for Telecommunications Access, the only non-ILEC commenter supporting SBC, naturally supports the measures it perceives will best serve its rightful demands for immediate high-speed Internet access. As an organization of rational consumers, it stands to reason that if they were fully informed of the possibility that approval of the SBC petitions would result in the services not being subject to price and quality competition from among multiple providers, they would reject the SBC proposal.

loops arbitrarily high and shutting down the ability of new entrants to opt-in to existing interconnection agreements.

II. Copper Loops Alone Are Not Adequate To Provision xDSL Services

Making copper loops, or even xDSL-capable loops, available to competitors does not take into account the frequent *necessity* of using ILEC facilities and other infrastructure deployed to provide xDSL over these loops.[3] SBC simply fails to discuss various technical considerations, such as the fact that ILEC use of remote terminals in gathering distribution lines means that competitors do not actually have central office access to those loops and therefore must rely on ILEC equipment. Moreover, even if requiring CLECs to install their own multiplexing and other equipment did not violate Section 251's unbundling requirements, the suggestion that CLECs will always have to provide their own xDSL electronics will make it economically feasible to begin provisioning xDSL services only in dense areas where ILECs more often claim that collocation space has already been exhausted. While SBC does not carve out such central offices from its own deployment plans, CLECs would effectively be prevented from offering xDSL from these same offices.

III. SBC Should Not Be Allowed Unchecked Control of Essential Facilities With Which It Competes with CLECs in Downstream Markets

What constitutes fair access to the public switched network is not a matter of ILEC opinion -- it should be decided on a nondiscriminatory basis.[4] SBC and the ILEC commenters would have

---

[3] *See* SBC Petition, at 5, 17. (Pleadings in this proceeding will be cited by the shortened name of the filing party.)

[4] BellSouth's suggestion that unbundling of xDSL services is not required as long as conditioned loops are made available is premised on the conclusory notion that, under 47 U.S.C. §251(d)(2), the ability of CLECs to provide such services is not impaired. BellSouth, at 5, n. 15. SBC (or any ILEC) has yet to so demonstrate. Indeed, as detailed in the comments of

compliance with critical portions of the Act determined by the ILECs themselves, even though they have an obvious incentive to deny CLECs the ability to take away ILEC customers. For instance, under the SBC proposal, SBC would determine whether unbundling is "technically feasible."[5] Despite SBC's plan to perform a "Loop Qualification Check" for a nonrefundable nonrecurring charge[6], there is nothing to guarantee that a self-serving assessment of "interference" would exclude competitor provisioning of xDSL, or that the tests would even work at all. Moreover, SBC has apparently already absolved itself of the requirements of the Act from which it now seeks to be excused. Its *Accessible Newsletter* mentions only loop conditioning and charges for loop cross connect, failing to address resale and the ability to collocate equipment to connect with loops.[7]

Even if loops are available for unbundling, SBC may price them out of the reach of CLECs if it is afforded the nondominant treatment it requests for xDSL services. GTE cynically suggests that the market will dictate the price.[8] However, as SBC would continue to be in complete control of the copper loop, a facility essential for xDSL technology, CLEC pricing would be strictly a function of the access to the loops that SBC allows and the prices that it sets. Given that the loop

---

various CLECs, SBC and other ILECs have erected numerous stumbling blocks regarding the ability to use unbundled loops and collocate equipment to service such loops.

[5] *See* Pacific Bell "Accessible" Newsletter No. CLECC98-056 (June 26, 1998)("*Accessible Newsletter*"), under "UNE" (attached hereto as Exhibit A).

[6] *See* SBC Petition at 18; Accessible Newsletter, "Loop Qualification Process." Presumably, SBC's xDSL affiliate would be liable for the same charge. Other ILEC commenters have accepted SBC's assurances, praising it for its proposed "nondiscriminatory" plan. *See* GTE Comments at 4-5, BellSouth Comments at 5, and USTA Comments at 2.

[7] *See generally* Exhibit A.

[8] *See* GTE Comments, at 7.

is a bottleneck facility that SBC could use to discriminate against competitors, SBC's control over it requires that, consistent with other Commission orders, it be made available to others with the appropriate level of price regulation. (USTA and BellSouth claims that there are other means for consumers to get high-speed Internet access are offered without credible basis and do not obviate the statutory requirements for unbundling. Control of the loop is, of course, the quentessential monopoly element.[9])

SBC should perform tests on loops objectively without regard to whether the request for such tests originates from a CLEC or SBC's own retail concern.[10] Relying on incumbents to provide competitors with full, fair, non-discriminatory, and economically reasonable access to loops has become especially pivotal given the development of technology which, when offered in a competitive market, promises widespread availability of high-speed Internet and other data access. Because the ILEC could lose a customer or potential customer for each line which is tested, the economics associated with continued ILEC control of critical facilities on which their competitors rely require that testing be performed on an unbiased basis, at parity intervals, and not by anyone who knows the source requesting such test.

---

[9] BellSouth has not undertaken to assess the level of competition in the market for high-speed access, instead taking SBC at its word that alternate high-speed access methods are already available to consumers at a price and speed that are at least equal to their xDSL offering. *See* BellSouth Comments, at 2, 6; *see also* USTA Comments at 3 ("already competitive data" market). In any case, SBC's demonstration of alternatives is scant. *See generally* SBC Petition, at 10-17.

[10] Presumably to prevent cross-subsidization from the rate base, SBC has proposed accounting safeguards but does not address the necessity of other protection for customers and competitors. SBC Petition, at 35.

IV Additional Anticompetitive Ideas Supported by ILEC Commenters Would Tend to Limit Local Competition

Other endorsements by ILEC commenters should be discounted. GTE characterizes high-speed access to the Internet using xDSL as origination and termination of interLATA calls, or "exchange access," and therefore not subject to resale.[11] This simply rehashes arguments already propounded in numerous proceedings addressing the reciprocal compensation for calls to ISPs and, at the least, should be rejected as collateral. For its part, BellSouth attempts to justify ignoring the requirements set forth in 252(i), the Act's "opt-in" requirement, without basis.[12]

---

[11] *See* GTE Comments, at 6.

[12] *See* BellSouth Comments, at 7.

V. Conclusion

As the Act clearly recognized, until competitors can fairly utilize the public switched network, consumers will not have the benefits of competition. The deployment of xDSL and other technology should be driven by consumer choice -- and not held hostage to SBC's monopoly stranglehold. SBC's proposal allows it to control when, how, at what price, and at the exclusion of whomever, it provides services. In order to facilitate xDSL offerings by numerous competitors, Allegiance respectfully asks the Commission to deny the relief Petitioners seek.

Respectfully submitted,

Robert W. McCausland
Vice President, Regulatory and Interconnection
Allegiance Telecom, Inc.
1950 Stemmons Freeway, Suite 3026
Dallas, TX 75207-3118
(214) 853-7117 (Tel)
(214) 853-7110 (Fax)

Date: July 1, 1998

EXHIBIT A

Accessible

PACIFIC BELL

"Asymmetric Digital Subscriber Line (ADSL) - California"

Date: June 26, 1998

Number: **CLECC98-056**

Contact: Pacific Bell Account Manager

Pacific Bell is sending notification of a new California service offering, ADSL (Asymmetric Digital Subscriber Line) service effective July 1, 1998. ADSL service is a data over voice product that will enable the customer to send and receive data files at high speeds over standard voice lines. The customer will have a dedicated connection from the home or office to a Pacific Bell central office which will enable the customer to have a dedicated connection to an Internet Service Provider (ISP), or have the ability to subscribe to an On-Line Service Provider (OSP), or access a Corporate Enterprise Network with a Permanent Virtual Circuit (PVC). ADSL will be available to residence or small/medium business end users, large business customers, as well as Internet Service Providers. The customer's home or office must be served by an ADSL equipped wire center, served by a qualified network loop connection from that wire center. The specific distance limits (requirements) will be determined by the customer's selection of DSL options, the make-up of the serving network connection components and the influence (presence) of other interfering services in the loop from the central office to the customer. Generally, distance limits will be 15,000 to 16,000 cable feet from the central office.

The following are features of Pacific Bell's ADSL service offering:

- IP addresses will be assigned by the ISP or corporate network administrator.
- Rate adaptation will be a feature of the customer's modem to coordinate a "handshake" with the central office equipment. (Some variation in transmission rates may be experienced as a result of ordinary network activity or modifications).

- The customer will have higher level of security and be serviced with dedicated central office access and an ATM backbone.
- ADSL will support IP applications.
- Customers will have a choice of ISPs that are connected to Pacific Bell's Fast Packet Network.
- The customer must have a compatible modem and splitter for the service to work.

The Pacific Bell rate elements apply per ADSL connection and provide a point to point connection between the home or office and an ISP/enterprise network, as follows:

- **Option I :** Monthly recurring charges for high speed transport with a downstream speed of 384 Kbps. and an upstream speed of 128 Kbps.

- **Option II:** Monthly recurring charges for high speed transport with a downstream speed and upstream speed of 384 Kbps.

- **Option III:** Monthly recurring charges for high speed transport where the downstream speed is
  1.5 Mbps. and upstream speed is 384 Kbps.

- **Nonrecurring Charges:** Installation charges will apply for each speed and option.

- **Line Conditioning:** A one-time nonrecurring charge will apply in each case where Pacific is requested to and performs work to "condition" a line for ADSL service. This conditioning may include the removal of load coils, bridged tap, or repeaters.

In 1998, an ADSL tariff will be filed with the F.C.C. as an access service offering in California. The initial retail offering will be in 87 central offices in the areas of San Francisco, San Jose, Oakland, Anaheim, Los Angeles, San Diego and Sacramento beginning July 1, 1998. Product availability is subject to deployment of equipment in the end user's serving central office. Additional California communities will be equipped in 1998 and 1999.

Unbundled Network Elements (UNE)

A new Unbundled Network Element (UNE) ADSL capable loop will be available where technically feasible to Competitive Local Exchange Carriers (CLECs). This unbundled ADSL capable loop will be available from the end user premise to the central office Main Distribution Frame (MDF) with cross connects available to the CLEC's collocation arrangement. There will be a monthly recurring charge and a one-time nonrecurring charge associated with each loop and cross connect.

Loop Qualification Process

Each inquiry for an ADSL capable loop will require Pacific Bell to perform a loop qualification process. This process determines the physical characteristics of the loop, the presence of other interference technologies or if conditioning would allow the loop to fall within the parameters specified in TP 76730 "ADSL Based Service Network Interface Specification". Performance of the loop qualification process will carry a one-time nonrecurring charge. Pacific Bell's performance of the loop qualification check does not guarantee an ADSL capable loop.

Loop Conditioning

It is the CLEC's responsibility to determine whether conditioning, based on initial loop qualification comparison tables for their ADSL equipment, will meet their technical requirements. Performance of conditioning at the CLEC's request does not imply or guarantee success. In those cases where conditioning does not provide the capabilities desired, the CLEC is still liable for the nonrecurring charge associated with the conditioning requested and performed.

Loop Cross Connect

A new ADSL shielded cross connect will be required to be ordered with the unbundled ADSL capable loop. The placement of this new cross connect will be from the CLEC's collocation arrangement, typically the Intermediate Distribution Frame (IDF) to Pacific Bell's Main Distribution Frame (MDF) including the jack panel. There will a monthly recurring and one-time nonrecurring charge associated with this new cross connect and a monthly recurring associated with the jack panel. In those cases in California, where the CLEC may place its own jack panel, this unbundled network element would not be required.

The shielded cabling required with the introduction of this new technology must also be continued at the CLEC's collocation arrangement. This would require existing and future collocation arrangements that desire the ADSL capable loops, to request and be provided with the shielded cabling from the IDF to the collocation POT frame arrangement. This would be billed as a collocation arrangement cost component.

Pacific Bell reserves the right to make any modifications to or to cancel the above information prior to the proposed filing or effective dates. Should any modifications be made to this information, these modifications will be reflected in a subsequent letter sent at the time of filing. Should the information be canceled, Pacific Bell will send additional notification at the time of cancellation. Pacific Bell will incur no liability to the CLECs if such information, mentioned above, is canceled by Pacific Bell or is not ultimately approved by the Commission.

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of July, 1998, a copy of Allegiance Telecomm, Inc.'s Reply Comments in Docket No. 98-91, was sent by first class mail, or by hand delivery where indicated with an asterisk, to the parties identified on the attached list:

Robert W. McCausland

Janice Myles**
Common Carrier Bureau
Federal Commuicatons Commission
1919 M Street, NW.
Room 544
Washington, DC 20554

David J. Newburger
Newburger & Vossmeyer
Counsel for Campaign for Telecommunications Access
One Metropolitan Square, Suite 2400
St. Louis, MO 63102

John F. Raposa
Counsel for GTE Service Corporation
600 Hidden Ridge, HQE03J27
P.O. Box 152092
Irving, TX 75015-2092

Gail L. Polivy
Counsel for GTE Service Corporation
1850 M Street, N.W.
Washington, DC 20036

Lawrence E. Sarjeant
Linda Kent
Keith Townsend
Counsel for United States Telephone Association
1401 H Street, N.W., Suite 600
Washington, DC 20005

M. Robert Sutherland
Stephen L. Earnest
Counsel for Bellsouth Corporation
1155 Peachtree Street, NE
Suite 1700
Atlanta, GA 30309-3610

Thomas M. Koutsky
Assistant General Counsel
Covad Communications Company
6849 Old Dominion Drive, Suite 220
McLean, VA 22101

W. Scott McCollough
McCollugh & Associates, P.C.
1801 North Lamar, Suite 104
Austin, TX 78701

Steven Gorosh
Vice President & General Counsel
Northpoint Communications, Inc.
Counsel for Rhythms NetConnections, Inc.
222 Sutter Street
San Francisco, CA 94108

Kevin Timpane, Vice President, Public Policy
FirstWorld Comminations, Inc.
Counsel for Rhythms NetConnections, Inc.
9333 Gennesee Avenue, Suite 200
San Diego, CA 92121

Jeffrey Blumenfeld
Christy C. Kunin
Frank V. Paganelli
Blumenfeld & Cohen
Counsel for Rhythms NetConnections, Inc.
1615 M Street, NW, Suite 700
Washington, DC 20036

Steven M. Hoffer
Counsel for Coalition Representing Internet
Service Providers
95 Mariner Green Drive
Corte Madera, CA 94925

Charles C. Hunter
Catherine M. Hannan
Hunter Communications Law Group
Counsel for Telecommunications Resellers Assoc.
1620 I Street, NW, Suite 701
Washington, DC 20006

Russell M. Blau
Swidler & Berlin, Chartered
Counsel for KMC Telecom, Inc.
3000 K Street, NW, Suite 300
Washington, DC 20007

Lawrence G. Malone
General Counsel
State of New York Department of Public Service
Three Empire State Plaza
Albany, NY 12223-1350

Robert D. Collet
Chairman of the Board
Commercial Internet eXchange Association
1041 Sterling Road
Suite 104A
Herndon, VA 20170

Barbara A. Dooley
Excecutive Director
Commercial Internet eXchange Association
1041 Sterling Road
Suite 104A
Herndon, VA 20170

Cindy Z. Schonhaut
Senior Vice President of Government Affairs and
External Affairs
ICG Communications, Inc.
161 Inverness Drive
Englewood, CA 80112

Albert H. Kramer
Michael Carowitz
Christopher T McGowan
Dickstein Shapiro Morin & Oshinsky LLP
Counsel for ICG Telecom Group, Inc.
2101 L Street, N.W.
Washington, DC 20037-1526

Anne K. Bingaman
Douglas W. Kinkoph
LCI International Telecom Corp.
8180 Greensboro Drive, Suite 800
McLean, VA 22102

Peter A. Rohrbach
Linda L. Oliver
David L. Sieradzki
Hogan & Hartson L.L.P.
Counsel for LCI International Telecom Corp.
555 13th Street, NW
Washington, DC 20004

Dana Frix
Kemal M. Hawa
Swidler & Berlin, Chartered
Counsel for Hyperion Telecommunications, Inc.
3000 K Street, NW, Suite 300
Washington, DC 20007

Robert M. Lynch
Southwestern Bell Telephone
One Bell Plaza, Room 3703
Dallas, TX 75202

International Transcription Services, Inc.**
1231 20th Street, N.W.
Washington, DC 20036

Attachment A

DOCUMENT OFF-LINE

This page has been substituted for one of the following:

o An oversize page or document (such as a map) which was too large to be scanned into the RIPS system.

o Microfilm, microform, certain photographs or videotape.

✓ Other materials which, for one reason or another, could not be scanned into the RIPS system.

The actual document, page(s) or materials may be reviewed by contacting an Information Technician. Please note the applicable docket or rulemaking number, document type and any other relevant information about the document in order to ensure speedy retrieval by the Information Technician.

ONE 3½" DISK.